

OCT 31 2011

TONY R. MOORE, CLERK  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
LAKE CHARLES DIVISION

TONY MANNS : DOCKET NO. 2:11 CV 891  
VS. : JUDGE MINALDI  
J.P. YOUNG : MAGISTRATE JUDGE KAY

**MEMORANDUM ORDER**

Before the court is an Application for a Writ of Mandamus [Doc. 15], filed by the petitioner, Tony Manns. Mr. Manns is a prisoner currently confined at the United States Penitentiary in Pollock, LA. He filed a *pro se habeas corpus* petition on June 13, 2011. On October 3, 2011, the magistrate judge recommended that the petition be dismissed with prejudice [Doc. 12]. Mr. Manns now seeks a writ of mandamus from this court compelling the magistrate judge to reconsider her recommendation in light of the United States Supreme Court's decision in *Johnson v. Zerbst*, 304 U.S. 458 (1938).

The federal mandamus statute provides that "[t]he district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff." 28 U.S.C. § 1361. A writ of mandamus will issue only in extraordinary circumstances. *Kerr v. United States Dist. Ct. for the N. Dist. of Cal.*, 426 U.S. 394, 403, 96 S. Ct. 2119, 48 L. Ed. 2d 725 (1976). For the Petitioner to be successful in his request for a writ of mandamus, he must "demonstrate (1) a clear right to the relief, (2) a clear duty by the respondent to do the act requested, and (3) the lack

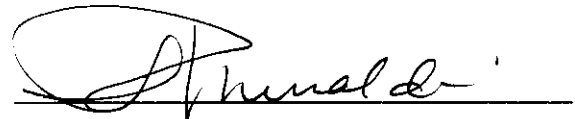
of any other adequate remedy." *In Re Stone*, 118 F.3d 1032, 1034 (5th Cir. 1997) (citing *United States v. O'Neil*, 767 F.2d 1111, 1112 (5th Cir. 1985) (citations omitted)).

Mr. Manns has failed to show that he has no adequate remedy at law. His complaint that the magistrate judge failed to consider applicable legal precedent in her Report and Recommendation could be adequately addressed in an objection to that recommendation. Accordingly, it is

ORDERED that the petitioner's Application for a Writ of Mandamus be DENIED.

IT IS FURTHER ORDERED that the application will be considered an objection to the magistrate judge's Report and Recommendation.

Lake Charles, Louisiana, this 28 day of October 2011.

A handwritten signature in black ink, appearing to read 'P. Minaldi', written over a horizontal line.

PATRICIA MINALDI

UNITED STATES DISTRICT JUDGE